**HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI**
**AND**
**HON'BLE SRI JUSTICE G. V. SEETHAPATHY**

**Writ Appeal No.1933 of 2004**

**Between:**

G. Jayalakshmamma & others

... Appellants

**And**

State of Andhra Pradesh, rep. by
Principal Secretary, Hyderabad and others

... Respondents

**::JUDGMENT::**

Counsel for the appellants: Shri S. Prasada Rao

Counsel for respondent Nos.1 and 2: Government Pleader for Industries and Commerce

Counsel for respondent No.4: Shri P.S.P. Suresh Kumar

Counsel for respondent No.5: Shri K. Gopal Chowdary.

**August 31, 2006**

**Per G.S. Singhvi, CJ**

This appeal is directed against order dated 19-2-2004 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellants for issue of a mandamus to

the respondents to consider the offer made by Sugarcane Growers Association through its ex-President for purchase of the assets of Nandyal Cooperative Sugars Limited.

Nandyal Sugars was registered as a cooperative society under the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act'). The majority of its shares (92.97%) valued at Rs.844.28 lakhs were held by the State Government. The factory set up by Nandyal Sugars in Kurnool District with an installed capacity of 1250 TCD had to be closed down during the crushing season of 1990-91 on account of non-availability of raw materials, high cost of production and fall in the sugar prices. After three years, the factory was re-started in 1994-95 under the management of IFFCO, but was again closed in 1996-97. As on 31-3-2000, the accumulated loss of Nandyal Sugars rose to Rs.1,768-00 lakhs as against paid up share capital of Rs.953.94 lakhs. In May 2001, the Registrar of Cooperative Societies, Andhra Pradesh, in exercise of the power vested in him under Section 12-A (1) of the Act, issued an advertisement for sale of the assets of Nandyal Sugars. Shri Gurijala Thimma Reddy, Sri Rayalaseema Sugar and Energy Limited (hereinafter described as 'Sri Rayalaseema Sugar') and M/s.Sujara Pipes gave bids of Rs.999.99 lakhs, 601.25 lakhs and Rs.125 lakhs respectively. The bid of Gurijala Thimmareddy was rejected because the same was not accompanied by Earnest Money Deposit (EMD) of Rs.10 lakhs in the form of Demand Draft/Bankers Cheque. The bid of Sri Rayalaseema Sugar was accepted by the competent authority because it was much higher than the one given by M/s.Sujara Pipes. After paying full price, the purchaser took over the assets o f Nandyal Sugars sometime in June 2003. Thereafter, 179 employees of Nandyal Sugars availed the benefit of Voluntary

Retirement Scheme (VRS) framed by the government.

After about three years of the issue of advertisement by the Registrar, Cooperative Societies, the appellant filed writ petition under Article 226 of the Constitution of India and prayed for issue of a mandamus to the respondents to consider the offer of rupees ten crores made by the Sugarcane Growers Association through its ex-President.

The learned Single Judge dismissed the writ petition by assigning the following reasons:

1) the petitioners have not challenged the acceptance of bid of Sri Rayalaseema Sugar;
2) the petitioners are guilty of laches;
3) that Sri Rayalaseema Sugar, whose bid was accepted by the competent authority, has not been impleaded as party to the writ petition, and
4) that no evidence has been produced to show that the Sugarcane Growers Association represented by its ex-President had made an offer of Rs.10 crores.

We have heard learned counsel for the parties. By two separate orders passed today, we have dismissed Writ Petition No.15218 of 2001 filed by Gurijala Thimma Reddy, who had given defective bid of Rs.999.99 lakhs and Writ Appeal No.563 of 2004 filed by Nandyal Co-operative Sugar Factory, Collective Farm Cane Growers Association. Therefore, this appeal is also liable to be dismissed.

There are two other reasons for our disinclination to entertain the appellants' prayer:

1) The appellants have neither challenged the decision of the competent authority to accept the bid given by Sri Rayalaseema Sugar nor they have prayed for quashing the

sale-deed executed by it.

2) The appellants had not impleaded Sri Rayalaseema Sugar as party to the writ petition and without hearing it, the learned Single Judge could not have nullified the sale of Nandyal Sugars. In the writ appeal, Sri Rayalaseema Sugar was permitted to be impleaded as respondent No.5 vide order dated 13-7-2004 passed in WAMP.No.1240 of 2004, but that is not sufficient to cure the defect with which the writ petition suffered. In any case, the view taken by the learned Single Judge that the sale of the assets of Nandyal Sugars in favour of Sri Rayalaseema Sugar cannot be nullified on account of non-impleadment of the purchaser as party respondent cannot be faulted.

In the result, the appeal is dismissed. The detailed reasons recorded in the order passed today in Writ Petition No.15218 of 2001 and judgment in Writ Appeal No.563 of 2004 shall be read as part of this order.

As a sequel to dismissal of the appeal, WAMP.No.3525 of 2004 filed by the appellants for restraining respondent Nos.1 to 4 from handing over Nandyal Sugars to Sri Rayalaseema Sugar is also dismissed.

**G.S. SINGHVI, CJ**

**G. V. SEETHAPATHY, J**

August 31, 2006

svs